

STATE OF MICHIGAN
COURT OF APPEALS

PATRICK C. BRONIAK,

Plaintiff-Appellant,

v

MARTIN A. CLENDENING, DURAN GRISA,
and MEGO, INC.,

Defendants-Appellees,

and

MIDAS INTERNATIONAL, INC.,

Defendant.

UNPUBLISHED

April 12, 2007

No. 274584

Wayne Circuit Court

LC No. 06-605677-CZ

Before: Neff, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's dismissal of his tort action because the worker's compensation bureau has exclusive jurisdiction over the claim. We affirm. This case arose from a childish prank perpetrated on plaintiff by a coworker, defendant Clendening, who rigged a car alarm to activate whenever a coworker shut the door to the employees' restroom. Plaintiff alleges that the alarm seriously damaged his hearing.

On appeal, plaintiff first argues that the trial court erred by ruling that the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.*, applied to the injurious activity. We disagree. According to *Sewell v Clearing Machine Corp*, 419 Mich 56, 62; 347 NW2d 447 (1984), the WDCA grants exclusive jurisdiction to the bureau to determine nearly all preliminary matters such as whether an injury arises out of or in the course of a plaintiff's employment. The only circuit court jurisdiction recognized by the Supreme Court in *Sewell* was the jurisdiction to determine whether an injured plaintiff was a defendant's employee. *Id.*; see also *Reed v Yackell*, 473 Mich 520, 528; 703 NW2d 1 (2005). Later cases in this court have arguably expanded the trial courts' jurisdiction to resolve whether an injury is generally related to employment or whether that relationship is so tenuous that the WDCA is clearly inapplicable. *Harris v Vernier*, 242 Mich App 306, 21 n 9, 617 NW2d 764 (2000); *Specht v Citizens Ins Co of America*, 234 Mich App 292, 297; 593 NW2d 670 (1999). Contrary to plaintiff's argument, the attenuation between a plaintiff's employment and the injury must be obvious, so a material issue of fact in

this regard ordinarily goes to the bureau, not to the jury. *Zarka v Burger King*, 206 Mich App 409, 411; 522 NW2d 650 (1994).

In this case, plaintiff's primary arguments revolve around whether the injury caused by his coworker's prank arose out of and occurred in the course of plaintiff's employment at defendant Mego, Inc.'s automobile repair shop. It is undisputed that plaintiff was at his place of business and that the prank was set by a coworker. See *Crilly v Ballou*, 353 Mich 303; 91 NW2d 493 (1958). Plaintiff argues that he had arrived at work extremely early and that his purposes were personal, namely, to eat breakfast, read the newspaper, and relax. He argues that he sprang the trap while in the process of this personal morning routine. However, these arguments relate to whether the injury arose out of his employment relationship, which is a question within the bureau's exclusive purview. *Sewell, supra*. It is sufficient for our analysis that plaintiff was defendant Mego, Inc.'s employee, that he arrived on the premises that day because he was scheduled to work, and that the shop specialized in mufflers rather than bagels and coffee. Cf. *Zarka, supra*. Because plaintiff fails to demonstrate that his presence in the employee's bathroom, before he started his shift and with work clothes in hand, was clearly unrelated to his employment at Mego, Inc., the trial court correctly ruled that the bureau had exclusive jurisdiction and dismissed the case.

Plaintiff next argues that the intentional tort exception to the WDCA precluded the trial court's grant of summary disposition. We disagree. According to MCL 418.131(1), an employer's intentional tort does not fall within the act. However, MCL 418.131(1) states that the phrase "intentional tort" only applies "when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge." In this case, the evidence suggests that several employees were subjected to the prank, and plaintiff was the only individual to suffer any damage from the alarm. In fact, defendant Clendening testified that he forgot about the alarm and accidentally triggered it himself. Plaintiff failed to present any evidence that Clendening harbored personal animus or any intent to physically harm him or the other employees he exposed to the alarm. No other employees complained or reported problems. Certainly the evidence does not establish that defendants knew that an injury was certain to occur through a single exposure to the alarm, and it instead reveals that substantial damage to hearing was not even within the risks considered likely to occur. See *Palazzola v Karmazin Products Corp*, 223 Mich App 141, 148-149; 565 NW2d 868 (1997). Under the circumstances, the trial court correctly held that no genuine issue of material fact regarding defendants' intent to injure plaintiff existed, so it properly granted defendants' motion for summary disposition.

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Christopher M. Murray